

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE: GENERIC DIGOXIN AND
DOXYCYCLINE ANTITRUST
LITIGATION**

**MDL No. 2724
No. 16-md-2724**

THIS DOCUMENT RELATES TO:
All Actions

HON. CYNTHIA M. RUFÉ

**APPLICATION OF GREGORY S. ASCIOLLA, COUNSEL FOR PLAINTIFFS
TULSA FIREFIGHTERS HEALTH AND WELFARE TRUST AND UFCW
LOCAL 1500 WELFARE FUND, FOR APPOINTMENT AS
LEAD OF THE END-PAYOR PLAINTIFFS' STEERING COMMITTEE**

Gregory S. Asciolla of Labaton Sucharow LLP respectfully moves for an Order appointing him as lead, or alternatively a member, of the End-Payor Plaintiffs' Steering Committee. He is highly experienced in antitrust class actions, including pharmaceutical cases, and he fully satisfies the criteria set forth in Rule 23(g) and Pretrial Order No. 1 (Dkt. No. 2).

Extensive antitrust and pharmaceutical experience: Mr. Asciolla, partner and co-chair of Labaton's Antitrust Practice Group, has decades of antitrust and class action experience. He began his career in DOJ's Antitrust Division where, as an attorney in the Healthcare Task Force, he took two cases to trial. At Labaton, Mr. Asciolla has been sole lead or co-lead counsel in numerous antitrust cases—including in the pharmaceutical industry—achieving enormous success for businesses, pension funds, municipalities, and consumers. For instance, Labaton served as co-lead counsel from 2006-13 in *In re Air Cargo Shipping Services Antitrust Litigation*, MDL No. 1775 (E.D.N.Y.), a case that obtained over \$1.2 billion in settlements, resolving allegations that over 25 airlines conspired to fix global prices. Mr. Asciolla was heavily involved from start to finish, including taking key depositions, briefing, and trial preparation.¹

¹ In addition, Mr. Asciolla is or has been sole or co-lead counsel in many other major antitrust class actions, including: *In re Opana ER Antitrust Litig.*, No. 14-cv-10150 (N.D. Ill.) (pay-for-delay case); *In re Platinum &*

Mr. Asciolla is a prolific writer, authoring articles for various antitrust publications, including regarding issues in the pharmaceutical industry. He is frequently sought after by the media, including *The Wall Street Journal*, *The New York Times*, *Financial Times*, and *Global Competition Review*, for commentary on antitrust developments. Mr. Asciolla was elected in 2016 to the Executive Committee of the New York State Bar Association Antitrust Law Section, is the Co-Chairman of the Antitrust and Trade Regulation Committee of the New York County Lawyers' Association, and serves on the *Law360* Competition Editorial Advisory Board. Mr. Asciolla was named a "Titan of the Plaintiffs' Bar" by *Law360* and was touted by *The Legal 500* as a "very effective plaintiffs' counsel."²

Ability to work cooperatively with others: Mr. Asciolla has earned a reputation as a collegial lawyer, respectful of both courts and opposing counsel. *The Legal 500* praised him for "always act[ing] with a good degree of professionalism." Indeed, in past cases, Mr. Asciolla has worked closely and effectively with counsel for the EPPs, direct purchaser plaintiffs and defendants here. Mr. Asciolla supports for PSC positions several EPP counsel whose firms he has worked with closely and cooperatively in the past: Jayne Goldstein (Pomerantz Law), Samuel Rudman (Robbins Geller Rudman & Dowd LLP), and Heidi Sifton (Lockridge Grindal Nauen P.L.L.P.). Given the size of the case—which may grow as more drugs and defendants are added—Mr. Asciolla respectfully recommends a PSC of five to seven firms.

Palladium Antitrust Litig., No. 14-cv-9391 (S.D.N.Y.) (price manipulation case); *In re Marine Hose Antitrust Litig.*, No. 08-md-1888 (S.D. Fla.) (price-fixing and market allocation case; obtained \$31.7 million in settlements); *In re Marine Products Antitrust Litig.*, No. 10-cv-2319 (C.D. Cal.) (price-fixing case); *Sandhaus v. Bayer AG*, No. 00-cv-6193 (Dist. Ct. of Kan., Johnson Cty.) (pay-for-delay case; obtained largest settlement ever for Kansas end-payers).

² Mr. Asciolla will be supported by Jay L. Himes and Karin E. Garvey, who have decades of experience handling complex antitrust litigation, including in pharmaceutical cases. While heading antitrust enforcement in the New York Attorney General's Office, Mr. Himes litigated, among other cases, *In re Buspirone* and *In re Cardizem CD* (\$100 and \$80 million settlements, respectively). At her prior firm, Ms. Garvey ran the defense for King Pharmaceuticals LLC in *In re Skelaxin (Metaxalone) Antitrust Litigation*, a pay-for-delay case that included a trial, and worked on numerous other pharmaceutical cases.

Mr. Asciolla's application for lead of the PSC is supported by EPPs' Liaison Counsel, Roberta Liebenberg of Fine, Kaplan and Black, R.P.C., with whom he has worked closely and successfully for nearly a decade.

Willingness and availability to commit to a time-consuming project: Mr. Asciolla's commitment to this case began in July 2014 when he led his firm's months-long independent investigation of the claims here. The firm purchased and analyzed digoxin and doxycycline pricing and sales data, as well as data regarding other drugs, which will significantly advance the prosecution of this matter. The firm also identified and interviewed industry insiders and potential witnesses and reviewed and evaluated analyst calls. In addition, before and after filing two complaints in the spring of 2016, Labaton invested heavily in the case, hiring an economist to further analyze the pricing data. This analysis has prepared Mr. Asciolla, with others in an appointed leadership, to draft a well-supported consolidated amended complaint.

Since the cases began, Mr. Asciolla has worked cooperatively with both plaintiffs' and defense counsel. He has taken charge of various tasks to advance the case expeditiously, including leading all activities during the JPML proceedings and actively participating in the management of the case to date. Mr. Asciolla has the time to lead this case, particularly in light of the fact that one of his major cases, *Air Cargo*, has concluded.

Accordingly, it is respectfully submitted that Mr. Asciolla be appointed as lead of the EPPs' PSC, or appointed a member of the PSC.

Date: September 23, 2016

Respectfully submitted,

Roberta D. Liebenberg (Pa. I.D. No. 31738)
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CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Application of Gregory S. Asciolla, Counsel for Plaintiffs Tulsa Firefighters Health and Welfare Trust and UFCW Local 1500 Welfare Fund, for Appointment as Lead of the End-Payor Plaintiffs' Steering Committee was filed electronically with the Clerk of the Court using the CM/ECF system, which automatically sent notification of such filings to the Filing User(s) listed on the Court's Case List for CM/ECF service. Parties may access this filing through the Court's electronic filing system.

Service was also effectuated on those individuals requiring manual noticing as listed on the Court's Mailing Information Manual Notice List.

Dated: September 23, 2016

/s/ Roberta D. Liebenberg
ROBERTA D. LIEBENBERG
(Pa I.D. No. 31738)